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Director's Office
Group 3700

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McLeland & Naughton, LLP
1725 K Street, NW, Suite 1000
Washington, DC 20006

In re application of
Akira Ueda et al.
Serial No. 09/044,030
Filed: March 19, 1998

DECISION ON
REQUEST

This is a decision on the request for new office action filed on April 3, 2001. A supplement to this request was filed on May 2, 2001.

BACKGROUND

On February 7, 2001, a request for a continued prosecution application (CPA) was filed.

On February 21, 2001, a final office action was mailed.

On March 16, 2001, a preliminary amendment which was treated as a response after final was submitted.

On March 21, 2001, an advisory action was mailed.

DISCUSSION

37 CFR 103(b) states:

(b) Limited suspension of action in a continued prosecution application (CPA) filed under § 1.53(d). On request of the applicant, the Office may grant a suspension of action by the Office under this paragraph in a continued prosecution application filed under § 1.53(d) for a period not exceeding three months. Any request for suspension of action under this paragraph must be filed with the request for an application filed under § 1.53(d), specify the period of suspension and include the processing fee set forth in § 1.17(I).

MPEP 711.03(c) states in part:

To minimize costs and burdens to practitioners and the Office, the Office has

modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petitioners request that a new office action be mailed in view of the non-receipt of the February 21, 2001 final office action and that a request was made that the examiner withhold action until a Preliminary Amendment was filed.

In regard to the non-receipt of the February 21, 2001 office action, a review of the docket records submitted by petitioners reveals that there is an entry for application number 09/044,030 on February 21, 2001. Petitioners have submitted supplemental evidence that the entry was for the receipt of the filing receipt and not the office action. However, petitioners' request lacks a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.

In regard to the request that the examiner withhold action until a Preliminary Amendment was filed, item 11 of petitioners CPA transmittal form indicates a request for a "Petition for 3-month Extension of Time: The Examiner is requested to withhold action until a Preliminary Amendment is filed, which will be filed as soon as possible." It appears that petitioners are requesting suspension of the CPA under 37 CFR 1.103(b).

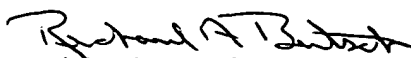
While petitioners' request could be broadly construed as a request for suspension, petitioners failed to submit the required processing fee set forth in § 1.17(I). The only money submitted by petitioners was a check in the amount of \$710 for the filing fee. While petitioners authorized to charge payment for any additional filing fees and Extension of Times fees, no authorization was made to charge the suspension fees. In view of no processing fee being submitted, the Office properly treated item 11 of petitioners' transmittal letter by not suspending the application.

DECISION

The petition is dismissed

Petitioners' time for response to the final office action remains running from the February 21, 2001 mailing date of the final.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition for New Office Action."


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